

Protest of) Date: March 9, 1990
MONTGOMERY ELEVATOR CO.)
Solicitation No. 169991-A-0016) P.S. Protest No. 90-5

DECISION

Montgomery Elevator Co. (Montgomery) protests the award of a contract for elevator maintenance for the Rockford, Illinois, post office to Area Elevator, Inc.

Solicitation No. 169991-90-A-0016 was issued on October 24, 1989, with due on November 7. The solicitation required the offeror to propose prices for pre-maintenance repairs as well as thirty-six months of maintenance. Section 1.2, Descriptions & Specifications, stated:

The contractor shall provide maintenance services for the elevator listed in Exhibit A, in strict accordance with "Specification-Elevator Maintenance Services," (Exhibit C) which is attached hereto and made a part hereof.

Exhibit C, entitled Specification for Elevator Maintenance Services, provided, in pertinent part, as follows:

1-2 PERSONNEL REQUIREMENTS

All work under the contract shall be performed by skilled, competent journeyman elevator mechanics employed and directly supervised by the contractor. Elevator mechanic helpers and/or elevator mechanic apprentices may be used, provided they are under the direct supervision of a journeyman elevator mechanic at all times.

Two offers were received, with Area the low offeror and Montgomery second low. Award was made to Area on November 9, 1989.

By letter dated December 19, Montgomery protested the award of the contract to Area, stating that the president of Area was not a journeyman elevator mechanic, that no one else at Area offers possessed those qualifications, and, therefore, that Area was not

in compliance with the contract requirement that the contract work be performed by journeyman elevator mechanics. The contracting officer denied Montgomery's protest on January 3, 1990, stating that she had no evidence to support 5 Montgomery's assertion that Area was in violation of the contract's personnel qualification requirements.

Montgomery subsequently protested to our office by letter dated January 17. It renewed its assertion that the president of Area was not qualified to meet the personnel requirements of the contract, enclosing as support a letter from the International Union of Elevator Constructors setting forth Area's president's educational program, which allegedly showed he was not a journeyman elevator mechanic.

In his report, the contracting officer notes that the protest was untimely pursuant to Procurement Manual (PM) 4.4 d., as it was received on December 21, which was more than 15 working days after the November 9 contract award date. The contracting officer notes that Montgomery was not notified of contract award until December 8, but there was no requirement under informal purchasing procedures that unsuccessful offerors be notified of award.^{1/} The contracting officer also states that, based on information gathered from a number of sources, Area was a responsible offeror. Montgomery responds that the contracting officer's position fails to address the issue whether Area's president is qualified to perform the required services. Area has submitted comments which indicate that Montgomery is using a biased definition of "journeyman elevator mechanic," that its president has more than sufficient experience in repairing elevators, and that it is fully capable of performing the contract in accordance with its terms and conditions.

We cannot rule on the merits of Montgomery's protest because it has been untimely filed. Our regulations, set forth at Procurement Manual (PM) 4.5.4 d. provides that "no protest will be considered if received more than 15 working days after award of the contract in question." The award of this contract was November 9, 1989, and Montgomery's protest was not received until December 21. Therefore, its protest was untimely filed. See K-D Engineering, Inc., P.S. Protest No. 87-114, November 27, 1987; Trans World Airlines, Inc., P.S. Protest No. 85-49, August 21, 1985; William Murphy, P.S. Protest No. 84-83, December 10, 1984. The timeliness requirements imposed by our regulations are jurisdictional, and we cannot consider the merits of any issue which has been untimely raised. Omnicon, Inc., P.S. Protest No. 84-24, June 25, 1984; Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983. We have no authority to waive or disregard the timeliness issue in a particular case. POVECO, Inc. et al., P.S. Protest No. 85-43, October 30, 1985. Failure to receive notification of contract award in a timely fashion does not justify an exception from the timeliness requirements. Air Transport Association of America, On Reconsideration, P.S. Protest No. 84-29, June 1, 1984; Cincom Systems, Inc., P.S. Protest No. 76-80,

^{1/}Section 4.2.8 of the Procurement Manual provides that:

There is no requirement to notify unsuccessful offerors or quoters [of award on a simplified purchase]. If an unsuccessful offeror or quoter requests an explanation of why it did not receive an award, a debriefing may be accomplished in person or by telephone.

April 25, 1977.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/26/93]